

Nov 4 12 20 PM '99 Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
DISPATCHED BY

In re Applications of	)	CC DOCKET NO. 91-142
)	
ALGREG CELLULAR ENGINEERING	)	File No. 10607-CL-P-307-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 307, Alabama 1 - Franklin)	
)	
CRANFORD CELLULAR COMMUNICATIONS	)	File No. 10611-CL-P-311-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 311, Alabama 5 - Cleburne)	
)	
BAY CELLULAR OF FLORIDA	)	File No. 10754-CL-P-497-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 497, Mississippi 5 -)	
Washington)	
)	
FLORIDA CELLULAR	)	File No. 10445-CL-P-505-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 505, Missouri 2 - Harrison)	
)	
A-1 CELLULAR COMMUNICATIONS	)	File No. 10454-CL-P-514-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 514, Missouri 11 - Moniteau)	
)	

Federal Communications Commission**FCC 99-281**

SIGNAL CELLULAR COMMUNICATIONS	)	File No. 10721-CL-P-632-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 632, South Carolina 8 -)	
Hampton)	
)	
A-1 CELLULAR COMMUNICATIONS	)	File No. 10409-CL-P-661-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 661, Texas 10 - Navarro)	
)	
EJM CELLULAR PARTNERS	)	File No. 10116-CL-P-721-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 721, Wyoming 4 - Niobrara)	
)	
SATELLITE CELLULAR SYSTEMS	)	File No. 10037-CL-P-318-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 318, Arizona 1 - Mohave,)	
for Station KNKN 268)	
)	
JAYBAR COMMUNICATIONS	)	File No. 10042-CL-P-323-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 323, Arizona 6 - Graham,)	
for Station KNKN 251)	
)	
DATA CELLULAR SYSTEMS	)	File No. 10029-CL-P-345-A-88
	)	File No. 07080-CL-P-MP-91
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 345, California 10 - Sierra,)	
for Station KNKN 250)	
)	

BRAVO CELLULAR	)	File No. 10673-CL-P-579-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 579,)	
North Carolina 15 - Cabarrus)	
)	
ALPHA CELLULAR	)	File No. 10909-CL-P-586-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 586, Ohio 2 - Sandusky)	
)	
CEL-TEL COMMUNICATIONS	)	File No. 10912-CL-P-589-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 589, Ohio 5 - Hancock)	
)	
EJM CELLULAR PARTNERS	)	File No. 10567-CL-P-596-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 596, Oklahoma 1 - Cimarron)	
)	
PINELLAS COMMUNICATIONS	)	File No. 10808-CL-P-613-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 613, Pennsylvania 2 -)	
McKean)	
)	
CENTAUR PARTNERSHIP	)	File No. 10720-CL-P-631-A-89
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 631, South Carolina 7 -)	
Calhoun)	
)	

CELLULAR PACIFIC	)	File No. 10031-CL-P-346-A-88
	)	File No. 06606-CL-MP-90
	)	File No. 06688-CL-MP-90
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 346, California 11 -)	
El Dorado, for Station KNKN 252)	
)	
NORTH AMERICAN CELLULAR	)	File No. 10066-CL-P-388-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 388, Idaho 1 - Boundary,)	
for Station KNKN 253)	
)	
ALPHA CELLULAR	)	File No. 10318-CL-P-410-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 410, Indiana 8 - Brown, for)	
Station KNKN 340)	
)	
For assignment of Station KNKN 340 in the	)	File No. 04924-CL-AL-1-90
Domestic Public Cellular Telecommunications)	
Radio Service on Frequency Block A,)	
in Market 410, Indiana 8, RSA)	
)	
ALEE CELLULAR COMMUNICATIONS	)	File No. 10074-CL-P-555-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 555, New Mexico 3 -)	
Catron, for Station KNKN 271)	
)	
CRYSTAL COMMUNICATIONS SYSTEMS	)	File No. 10078-CL-P-606-A-88
)	
For facilities in the Domestic Public Cellular)	
Telecommunications Radio Service on Frequency)	
Block A, in Market 606, Oregon 1 - Clatsop,)	
for Station KNKN 309)	

MEMORANDUM OPINION AND ORDER
AND ORDER ON RECONSIDERATION

Adopted: October 6, 1999; Released: October 18, 1999

By the Commission:

TABLE OF CONTENTS

<u>Topic</u>	<u>Paragraph No.</u>
I. Introduction	1
II. Background	2
III. Discussion	
A. AALA's Section 22.129 Waiver Request	9
B. Lack of Candor -- Alec	12
C. Procedural Issue	17
IV. Conclusion	20
V. Ordering Clauses	21
Appendix A	
Appendix B	
Appendix C	

I. INTRODUCTION

1. By this action, we grant AALA's request that we waive the Commission's rules governing limitations on payments involving settlement agreements.¹ We also grant AALA's request that we dismiss its petition for reconsideration of the Commission's decision in Algreg Cellular Engineering.² We also deny the petition for reconsideration of that decision filed by

¹ AALA Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver (filed Feb. 5, 1999) (AALA Motion for Rulings).

² Algreg Cellular Engineering, Memorandum Opinion and Order, 12 FCC Rcd 8148 (1997) (affirming in part and denying in part review of the HDO and the Review Board Decision) (Algreg Cellular Engineering). See also 9 FCC Rcd 5098 (Rev. Bd. 1994) (Review Board Decision), recon. denied, 9 FCC Rcd 6753 (Rev. Bd. 1994), affirming, 7 FCC Rcd 8686 (ALJ 1992) (ALJ Decision), 6 FCC Rcd 2921 (Com. Car. Bur. 1991) (HDO).

Alee. Finally, we dismiss the petition for reconsideration filed by 2-Way Radio and the Statement for the Record filed by Castle Trust.³

II. BACKGROUND

2. The Cellular Corporation (TCC) prepared and filed cellular applications in 428 markets between July 1988 and January 1989. Applications prepared by TCC that won rural service area (RSA) lotteries but which had not been awarded licenses prior to the issuance of the hearing designation order (HDO) in this proceeding included Algreg Cellular Engineering, Alpha (for the Ohio 2 RSA), A-1 Cellular Communications, Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida Cellular, Pinellas, and Signal (Applicants). Applications prepared by TCC that had already received licenses when the HDO was issued included Alee, Alpha (for the Indiana 8 RSA), Cellular Pacific, Crystal, Data, Jaybar, North American, and Satellite (Licensees).⁴ Each of the Applicants and Licensees participated in a risk-sharing agreement which they subsequently rescinded.⁵

3. The Common Carrier Bureau (Bureau) found that the risk-sharing agreements violated sections 22.33(b)(2), 22.922, and 22.921(b) of the rules, which were designed to deter speculative filings that may skew a lottery.⁶ The Bureau further concluded that any Applicant that had entered into or was a party to the risk-sharing agreements had filed a

³ Some of the parties have changed since issuance of the Commission's decision. For clarity, this order will refer to the parties by their original names. The full names that correspond to the abbreviated names in this order are listed in Appendix A, with the exception of the names that correspond to "Castle Trust", which are listed in Appendix B, and with the exception of the names that correspond to "2-Way Radio," which are listed in Appendix C.

⁴ Algreg Cellular Engineering at 8152-53.

⁵ The risk-sharing agreements provided that, in the event any signatory applicant won the lottery, that licensee would retain ownership and control of the cellular system, but each signatory to the Agreement would have the right to receive income and sales proceeds from the signatories whose RSA applications had been granted. Algreg Cellular Engineering at 8152-53.

⁶ 47 C.F.R. § 22.33(b)(2) (prohibiting partial settlements among nonwireline RSA applicants); 47 C.F.R. § 22.922 (prohibiting the transfer of interests in pending nonwireline RSA applications); 47 C.F.R. § 22.921(b) (prohibiting cross ownership interests in competing nonwireline applications for the same RSA market); see HDO at 2925 (concluding that the reciprocal right to share profits or sale proceeds and the right to inspect the licensee's books conferred by the Agreements are ownership interests within the meaning of section 22.921(b)).

defective application that must be dismissed.⁷ Additionally, the Bureau determined that participation in the risk-sharing agreements could reflect adversely on the Licensees' qualifications. It therefore designated the Applicants' and Licensees' RSA cellular applications for consolidated hearing and ordered the Licensees to show cause why their authorizations should not be revoked.⁸ The Show Cause Order also included lack of candor and alien ownership issues against Alee.⁹

4. Affirming the Administrative Law Judge's (ALJ's) determination that each of the Licensees and Applicants was a willing participant in TCC's risk-sharing scheme, the Review Board summarily dismissed the applications for the RSA markets that were filed by the Applicants and revoked the RSA cellular authorizations held by the Licensees. The Board also affirmed the ALJ's determination that Alee's application, as originally filed, exceeded the limits on alien ownership set forth in section 310(b)(3) of the Communications Act and agreed with the ALJ that this violation was an independent basis for revoking Alee's cellular authorization.¹⁰ In light of its conclusion that the alien ownership issue independently justified revocation, the Board found it unnecessary to reach the ALJ's finding that Alee had intentionally misrepresented the citizenship status of an alien owner and, therefore, lacked candor.¹¹

5. In Algleg Cellular Engineering, the Commission granted in part and denied in part applications for review of the HDO and Review Board Decision. The Commission found that the risk-sharing agreements did not create "ownership interests," as expressly required by the multiple ownership (section 22.921(b)) and certification (section 22.923(b)(7)) rules, and that the parties did not have notice that the contractual interests conferred by the risk-sharing agreements would violate either of these rules.¹² The Commission found further that violations of the rules banning partial settlements and pre-grant transfers (sections 22.33(b)(2)

⁷ HDO at 2928-31.

⁸ 47 U.S.C. § 312 (permitting revocation of an authorization because of conditions coming to the attention of the Commission that would have warranted denial of the original application).

⁹ HDO at 2924.

¹⁰ Review Board Decision at 5147, 5150.

¹¹ Id. at 5147. The ALJ had found that Alee's management knew that one of the general partners was an alien, but represented to the Commission that the partner was a U.S. citizen. ALJ Decision at 8703-05.

¹² Id. at 8158.

and 22.922, respectively) did not render an application defective or adversely affect a licensee's basic qualifications. The Commission concluded that, while the risk-sharing agreements constituted a partial settlement agreement within the plain meaning of section 22.33(b)(2), this violation was not a basis to summarily dismiss the applications or to revoke the licenses.¹³

6. The Commission therefore reversed the Bureau's determinations in the HDO that participation in the risk-sharing agreements rendered the applications defective and reflected adversely on the Applicants' and Licensees' qualifications. The Commission set aside the Review Board's decision dismissing the applications and revoking the licenses. The Commission granted the applications (with the exception of the applications filed by EJM, Centaur and Bravo) and terminated the revocation proceeding with respect to all of the Licensees except for Alee.¹⁴ The Commission also determined that, because the language of section 22.129 of the rules¹⁵ is explicitly limited to agreements to dismiss or withdraw pleadings against a pending applicant, Commission approval was not required for agreements to withdraw or dismiss pleadings filed against a licensee.¹⁶

7. AALA, Alee, and 2-Way Radio filed petitions for reconsideration of Algreg Cellular Engineering and Castle Trust filed a Statement for the Record. AALA, all of the

¹³ Id.

¹⁴ Id. at 8151-52 (the applications filed by EJM, Centaur and Bravo could not be granted based on the record and those applications were remanded to the Bureau for expedited consideration); id. at 8175-81 (finding that Alee's lack of candor concerning its alien general partner warranted revocation of its license).

¹⁵ See paragraph 9 below. Since the filing of the petitions for reconsideration in this proceeding, the Commission has consolidated its previous service-specific rules governing settlement payment limitations (specifically, sections 22.129, 24.429, 27.319, 90.162 and 101.41) into section 1.935 of the rules, 47 C.F.R. § 1.935. For clarity, this order cites section 22.129, upon which the parties herein rely.

¹⁶ Algreg Cellular Engineering at 8180. Specifically, the Commission concluded that the settlement agreement between AALA and Crystal, the licensee of the Oregon 1 RSA market, was outside the scope of section 22.129 and could be effectuated without Commission approval. The Commission likewise determined that the portion of the settlement agreement between AALA and Alpha involving Alpha's authorization for the Indiana 8 RSA was beyond the scope of section 22.129. The Commission found, however, that the portion of the agreement relating to Alpha's pending application in the Ohio 2 RSA market was subject to the provisions of section 22.129 and that further submissions were required before Commission approval could be granted. Algreg Cellular Engineering at 8183-86.

Applicants, the remaining Licensees (i.e., Data, Cellular Pacific, Jaybar, North American, and Satellite), and Alee subsequently notified the Commission that they had entered into settlement agreements resolving "all litigation among and between them[.]"¹⁷ At the same time, AALA requested that the Commission either rule that the provisions of section 22.129 limiting payments for settlements to a petitioners' legitimate and prudent expenses do not apply to the settlement agreements involving the Applicants or waive the settlement limitations with respect to the settlement agreements involving the Applicants.¹⁸ In conjunction with the Joint Notice and AALA's Motion for Rulings, AALA and the Applicants filed requests that we dismiss certain pleadings¹⁹ that they had filed in this proceeding.²⁰

¹⁷ Joint Notice of Settlement Agreements and Request for Rulings at 2 and 5 (filed Feb. 5, 1999) (Joint Notice); *id.* (stating that the designated parties to the Algreg proceeding had reached a "global settlement" resolving their differences).

¹⁸ AALA Motion for Rulings at 1 and 6-16.

¹⁹ See A-1 Cellular Communications, Cel-Tel, Cranford, and EJM Joint Request for Dismissal of Pleading (filed Feb. 5, 1999); Florida Cellular Request for Dismissal of Pleading (filed Feb. 5, 1999); AALA Request for Dismissal of Pleading (filed Feb. 5, 1999) (requesting that the Commission dismiss with prejudice: (1) its petition for reconsideration filed July 3, 1997, seeking reconsideration of the Commission decision to grant the applications of A-1 Cellular Communications (with respect to the Missouri 11 RSA), Cel-Tel, Cranford, EJM, and Florida Cellular, and (2) its consolidated reply to oppositions to petition for reconsideration filed by A-1 Cellular Communications, Cel-Tel, Cranford, EJM, and by Florida Cellular, filed July 28, 1997).

²⁰ The Office of General Counsel granted AALA's, the remaining Licensees', and Alee's requests filed in conjunction with the Joint Notice that the Commission dismiss certain pleadings that they had filed in this proceeding relating to the remaining Licensees' applications. Algreg Cellular Engineering, Memorandum Opinion and Order at ¶ 5, FCC 99I-08 (released Apr. 28, 1999) (granting the remaining Licensees' and Alee's requests for dismissal and granting in part AALA's request for dismissal "[b]ecause the settlement agreements between AALA, the remaining Licensees, and Alee are not subject to Commission approval"). The order also severed licensees Satellite, Crystal, Alpha, Data, Cellular Pacific, Jaybar, and North American from the Algreg proceeding on a prospective basis. *Id.* On May 28, 1999, Castle Trust filed a Petition for Reconsideration of that severance order, which the Office of General Counsel has referred to us for consideration. For the reasons set forth in paragraph 19, *infra*, Castle Trust's Petition for Reconsideration is dismissed.

8. We address AALA's Motion for Rulings and AALA's and the Applicants' requests for dismissal in this order. We also address Alee's and 2-Way Radio's petitions for reconsideration and Castle Trust's Statement for the Record, along with the various responsive pleadings.

III. DISCUSSION

A. AALA's Section 22.129 Waiver Request

9. In conjunction with a comprehensive revision of its rules for cellular services, the Commission in 1994²¹ codified in section 22.129 of the rules its settlement policies for cellular applicants.²² Section 22.129 provides that "[p]arties that have filed . . . a petition to deny, informal objection or other pleading against a pending applicant in the Public Mobile Services and then seek to withdraw or request dismissal of . . . the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC."²³ Such parties must also submit a copy of any written agreement related to the withdrawal or dismissal, and submit an affidavit setting forth certification that the parties have not received any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application or petition.²⁴

10. In its motion for rulings, AALA urges that the circumstances of this case justify a waiver of the limitation on settlement amounts under section 22.129 with respect to the proposed settlement agreements involving AALA and the Applicants.²⁵ Conceding that the consideration that it would receive from the Applicants under the settlement agreements

²¹ See Revision of Part 22 of the Commission's Rules Governing Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd 6513, 6514, n.3 and 6586 (1994) (Part 22 Revision Order).

²² 47 C.F.R. § 22.129.

²³ 47 C.F.R. § 22.129.

²⁴ 47 C.F.R. § 22.129(a).

²⁵ AALA Motion for Rulings at 9-14. See also AALA Motion for Rulings at 6 (alternatively claiming that the proposed settlement agreements between AALA and the Applicants are subject to the provisions of former section 22.29, which had previously governed settlement agreements involving dismissal of petitions to deny and which did not require parties to submit the agreement to the Commission or to certify that the consideration received did not exceed the legitimate expenses incurred in prosecuting the petition).

would exceed its legitimate and prudent expenses,²⁶ AALA contends that a waiver is justified because the differential between its legitimate and prudent expenses and the settlement payments from the Applicants represents only a small fraction of the value of the authorizations at issue.²⁷ AALA also asserts that it is in the public interest to permit it to withdraw from the proceeding on a mutually agreeable basis insofar as a "change in federal law has precluded . . . [it] from securing the relief . . . [it] originally sought (i.e., a relottery)[.]"²⁸

11. We find that a waiver of section 22.129's limitation on settlement payments is warranted under the specific facts of this proceeding.²⁹ Section 22.129 reflects a balancing of our efforts to discourage the filing of speculative applications and pleadings designed solely to extract money from applicants, while still providing some incentive for legitimate petitioners and applicants to withdraw from proceedings and thus expedite service to the public.³⁰ In light of the "global" settlement between and among AALA, the remaining Licensees, and the Applicants, we find that a waiver of section 22.129 is justified because it would permit the

²⁶ See AALA Motion for Rulings at 11 (stating that, through mid-January, it had incurred "collective" legitimate and prudent expenses of \$3,124,633.13 in the course of litigating the Algreg proceeding; also stating that "the total amount of consideration to be received by [AALA] under all of the settlement agreements they have entered into involving parties to the [Algreg proceeding] . . . is \$6,300,573," of which \$4,164,805 would represent settlement payments from the Applicants).

²⁷ AALA Motion for Rulings at 11.

²⁸ See AALA Motion for Rulings at 13, citing Balanced Budget Act of 1997, P.L. 105-33, Stat. 258, Section 3002(a)(2), which, except for noncommercial educational broadcast stations and public broadcast stations, rescinded the Commission's authority under section 309(i) of the Communications Act of 1934, as amended, to issue licenses by lottery after July 1, 1997.

²⁹ See 47 C.F.R. § 22.119(a) (the Commission may grant a request to waive the requirements of Part 22 of the rules if (1) the underlying purpose of the rule would not be served or would be frustrated by application of the rule and a grant of the waiver would be in the public interest or (2) in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest). A waiver of the settlement limitations is also consistent with the objectives underlying the recent announcement to waive settlement payment limitations in certain Wireless Telecommunications Bureau's contested licensing cases. See Public Notice, DA 99-745 (released Apr. 16, 1999).

³⁰ Part 22 Rewrite Order at 6550.

resolution of a long-standing and litigious dispute between these parties. In addition, a waiver would serve the public interest by removing the uncertainty surrounding the applications at issue in this proceeding stemming from AALA's filings. In this regard, it also appears that AALA did not file its pleadings for speculative reasons or to extract money from the Applicants.³¹ We therefore waive the provisions of section 22.129 and approve the settlement agreements between AALA and the Applicants. In addition, we grant AALA's and the Applicants' request that we dismiss certain pleadings that they filed in this proceeding, as identified in footnote 19, above.

B. Lack of Candor -- Alee

12. After winning the lottery in December 1988, Alee filed a section 1.65 amendment on January 9, 1989, which was signed by Alee's signing partner, Robert Bernstein, and prepared by Alee's attorney, William J. Franklin. The amendment listed Shafi M. Sharifan (who was not a U.S. citizen) as one of its 14 partners and inaccurately stated that all of its partners were U.S. citizens. Based upon its independent review of the record and the exceptions, the Commission found that a preponderance of the evidence established that, when Bernstein signed the amendment, he knew that having an alien partner would adversely affect the tentative selectee's chance of getting the construction permit, and he also knew that the information contained in the amendment was false.³² Finding that Alee understood that this was a matter that could adversely affect the grant of the construction permit and that Alee intentionally concealed the presence of the alien partner, the Commission affirmed the ALJ's determination that Alee lacked candor and revoked Alee's license.³³

13. Alee contends that Franklin's testimony that the partners comprising Alee had agreed to continue to rely on Sharifan as a partner is not credible because Franklin prepared the amendment knowing that it contained incorrect information.³⁴ Alee also contends that the

³¹ See Algleg Cellular Engineering at 8184 ("deem[ing AALA's] . . . substantial, non-frivolous participation at every stage of this proceeding to be analogous to that of private attorney generals").

³² Algleg Cellular Engineering at 8175.

³³ Id. at 8176.

³⁴ Alee Petition at 3; id. at 3-4 (claiming that the Commission describes Franklin's conduct "but thereafter fails to weigh the material differences with Mr. Bernstein's testimony that: (1) he never saw Franklin's covering letter which was addressed to Alan Kane; (2) he received correspondence from Mr. Franklin . . . before and after this covering letter; (3) he did not know the name of the alien up to the time he signed the amendment; and (4) he understood that the alien problem had been taken care of").

Commission's reliance on the ALJ's determination that Alee lacked candor is "wholly misplaced" because, "in his comprehensive findings of fact on Alee, the ALJ made not one credibility or demeanor finding about the testimony of [the three partners testifying on behalf of Alee.]"³⁵

14. Alee's contentions raise essentially the same arguments that the Commission considered and rejected in Algreg Cellular Engineering. In reaching our conclusion that Alee lacked candor, we were not persuaded by Alee's attempt to impeach Franklin's credibility on the ground that his testimony was internally inconsistent as to whether he knew Sharifan was an alien when he prepared the amendment.³⁶ The Commission also recognized (as Alee now observes) that the ALJ's adverse credibility findings do not single out Alee's three testifying partners.³⁷ We nevertheless found that the ALJ's credibility findings were not in conflict with the record evidence and therefore were entitled to decisional deference.³⁸ Therefore, Alee has presented no new evidence which would warrant our reconsideration.

15. Alee also maintains that the revocation of its license for lack of candor must be reversed consistent with NextWave, and the PCS 2000 MO&O and PCS 2000 NAL companion orders (collectively, PCS 2000).³⁹ Alee asserts that while it is faulted for

³⁵ Alee Petition at 4-5 (citing Algreg Cellular Engineering at 8180).

³⁶ Algreg Cellular Engineering at 8178; id. at 8178-79 (finding that "the questionable nature of certain discrete portions of Franklin's testimony would not require that we reject his entire testimony") (citing Dorothy O. Schulze and Deborah Brigham, 8 FCC Rcd 442, 444 (1993)).

³⁷ Id. at 8180.

³⁸ Id. (citing WHW Enterprises v. FCC, 753 F.2d 1132 (D.C. Cir. 1985)); id. (finding it "significant . . . that the ALJ made these credibility findings in the context of the partnerships' efforts to blame all of their legal troubles on Franklin . . . [, which], of course, is precisely the defense that Alee has invoked here").

³⁹ Alee Petition at 6. See NextWave Personal Communications, Inc., 12 FCC Rcd 2030 (WTB 1997), application for review pending (NextWave) (finding that NextWave Personal Communications, Inc. (NextWave) exceeded the foreign ownership benchmark of Section 310(b)(4) and determining that it was in the public interest to grant C Block broadband PCS licenses to NextWave, conditioned on its restructuring to conform its foreign ownership to the statutory benchmark); PCS 2000, L.P., Memorandum Opinion and Order, 12 FCC Rcd 1681 (1997) (PCS 2000 MO&O) (finding that, because PCS 2000 L.P. (PCS 2000) had removed all individuals who may have been responsible for the misrepresentations from its organization, its applications for 15 Broadband C Block Personal Communications Services (PCS) may be

voluntarily making its alien disclosure to the Commission on its own initiative, NextWave was given six months to come into compliance with the statutory foreign ownership requirements and was praised by the Bureau for its cooperation in the matter.⁴⁰ Alee avers that the basis for the revocation of its license "pales into insignificance when compared with the misrepresentations, lying, forgeries and destruction of relevant records in the PCS 2000 [NAL] case[.]" where the Commission assessed a forfeiture, but did not revoke the licensee's authorization.⁴¹

16. The relevant facts of NextWave and the PCS 2000 are very different from those of the instant proceeding. In NextWave, the Bureau found no "reliable evidence that NextWave devised its capital structure in bad faith to exceed the foreign ownership benchmark, or deliberately attempted to deceive the Commission or evade its rules."⁴² In the PCS 2000 NAL, the Commission found that disqualification was not required because, "[a]fter learning of the deception [at issue], PCS 2000 moved quickly to take adequate remedial steps by removing from ownership and control positions those responsible for the misrepresentation."⁴³ In contrast, the Commission found that Alee lacked candor before the Commission concerning its alien general partner. Further, the Commission was "unimpressed by Alee's 'voluntary' reporting of this matter to the Commission in its April 30, 1990 letter to

granted); PCS 2000, L.P., Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) (PCS 2000 NAL) (determining that PCS 2000, through one of its officers and bidding agents, misrepresented facts to the Commission, lacked candor before the Commission, and otherwise attempted to mislead the Commission to cover up a mistaken bid made during Round 11 of the C Block PCS auctions and, therefore, found PCS 2000 apparently liable for a forfeiture in the amount of \$1,000,000).

⁴⁰ Alee Petition at 5-6.

⁴¹ Alee Petition at 6.

⁴² NextWave at 2070-71 ("NextWave cooperated in the . . . process, and produced facts and information the Bureau deemed necessary to resolve its concerns").

⁴³ PCS 2000 NAL at 1717 (footnote omitted); *id.* (finding that it had "every reason to 'anticipate that the future conduct of [PCS 2000] will measure up to the expectations' required upon [*sic*] Commission licensees"); see also PCS 2000 MO&O at 1688 (disqualification is not warranted because the applicant took "aggressive steps to remove from ownership and control positions those responsible for the misrepresentations").

the FCC Secretary" because, even assuming that Alee did not discover the errors in its amendment until early 1990, "it delayed almost four months in advising the Commission of this matter, and even then it failed to make a full disclosure."⁴⁴

C. Procedural Issue

17. 2-Way Radio, a group of entities that had not previously participated as parties in this proceeding, asserts that Algreg Cellular Engineering has adversely affected their applications, which are mutually exclusive with applications granted in that decision.⁴⁵ 2-Way Radio claims that, from the time the risk-sharing agreements first came to the Commission's attention, and until the issuance of Algreg Cellular Engineering, there was no opportunity or need for mutually exclusive applications to formally seek the maintenance of their applications.⁴⁶ 2-Way Radio contends that the hearing designation order provided the ALJ and the Review Board "with an extremely limited scope of authority" to determine that the designated applications should not be denied.⁴⁷ It asserts that the dismissal of 2-Way Radio's various mutually exclusive applications as a result of Algreg Cellular Engineering represents the "first opportunity, and necessity, to protect their status as mutually exclusive applicants . . ."⁴⁸

18. Castle Trust, a group of entities which likewise has not previously participated as a party in this proceeding, claims that their pending applications before the Commission with respect to the various markets at issue "plainly" establish their standing herein.⁴⁹

⁴⁴ Algreg Cellular Engineering at 8180-81 ("The failure to fully disclose the facts involving Sharifan's participation in Alee in a timely manner, together with Bernstein's dubious testimony on this matter, significantly undercuts the claim that the 'voluntary' reporting of these matters belies any intent to deceive the Commission."); id. (also finding that Alee delayed reporting this matter until after grant of the construction permit, which meant that, instead of dismissing Alee's application, the Commission would have had to institute revocation proceedings).

⁴⁵ 2-Way Radio Petition at 2.

⁴⁶ 2-Way Radio Reply at 4.

⁴⁷ Id. at 5-6.

⁴⁸ Id. at 7.

⁴⁹ Castle Trust Statement for the Record at 8 n.4 (filed June 26, 1998); see also id. at 6 (contending that their applications "remain pending because two petitions for reconsideration of [Algreg Cellular Engineering] . . . remain pending at the Commission"); see also Algreg

Alternatively, Castle Trust argues that good cause exists for the participation of Castle Trust in the on-going deliberations and disposition of this matter.⁵⁰

19. Section 1.106(b)(1) of our rules provides that a petition for reconsideration filed by a person who is not a party to a proceeding "shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."⁵¹ The Commission's decision in Algreg Cellular Engineering was the culmination of more than seven and one half years of litigation before the Commission. At no stage of the proceedings did 2-Way Radio or Castle Trust seek party status, despite opportunities to do so. As Algreg points out, the Commission released public notices identifying the various permittees as tentative selectees, thereby triggering the petition-to-deny process of section 309(d) of the Act and section 1.823(b) of the rules, which governed petitions to deny against RSA cellular random selection tentative selectees and allowing for a 45-day period for filing petitions to deny.⁵² Following the disclosure of the risk sharing agreements, the Bureau in 1990 initiated an investigation and invited interested persons to intervene in the investigation within 30 days, even if they had not filed petitions to deny.⁵³ Following the investigation, the Bureau issued its hearing designation order.⁵⁴ Under section 309(e) of the Act and section 1.223 of the rules, any party in interest who had not been named as a party to the hearing designation order could have requested party status by filing a timely petition for intervention. Neither 2-Way Radio nor Castle Trust intervened in the proceeding at any of these points. We therefore agree with Alpha and Algreg⁵⁵ that 2-Way Radio and Castle Trust have failed to show why it was not possible for them to participate in the earlier stages of this proceeding as required under section 1.106(b)(1), and we dismiss 2-Way Radio's petition and Castle Trust's Statement for the Record on this basis.

Joint Motion to Strike So-Called "Statement of the Record" at i (filed July 22, 1998) (requesting that the Commission "summarily strike" Castle Trust's Statement for the Record and "preclude their participation in this case") (Algreg Motion to Strike).

⁵⁰ Castle Trust Statement for the Record at 8 n.4; see also id. at 7 ("seek[ing] reconsideration of the Commission's decision on the same factual and legal bases as those set forth in the petitions for reconsideration already on file").

⁵¹ 47 C.F.R. § 1.106(b)(1).

⁵² Algreg Opposition at 5.

⁵³ Public Notice, Report No. CL-90-92 (released Jan. 31, 1990).

⁵⁴ 6 FCC Rcd 2921 (Com. Car. Bur. 1991).

⁵⁵ See Alpha Opposition at 5; Algreg Opposition at 8; Algreg Motion to Strike at i.

III. CONCLUSION

20. In light of the above discussion, we grant AALA's Motion for Rulings and its request for dismissal of its petition for reconsideration. We also deny the petition for reconsideration filed by Alee against the Commission's decision in Algreg Cellular Engineering. We also dismiss the petition for reconsideration of that decision filed by 2-Way Radio and the Statement for the Record filed by Castle Trust pursuant to section 1.106 of the rules.

IV. ORDERING CLAUSES

21. ACCORDINGLY, IT IS ORDERED That AALA's⁵⁶ Joint Motion for Rulings Regarding Settlement Agreements or, Alternatively, for Approval and Partial Waiver (filed Feb. 5, 1999) (requesting that the Commission approve the settlement agreements involving AALA and Algreg Cellular Engineering, Alpha Cellular (for the Ohio 2 RSA market), A-1 Cellular Communications (for the Missouri 11 and Texas 10 RSA markets), Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM (for the Oklahoma 1 and Wyoming 4 RSA markets)), Florida Cellular, Pinellas, and Signal IS GRANTED.

22. IT IS FURTHER ORDERED that the settlement agreements filed on February 5, 1999, between AALA and Algreg Cellular Engineering, Alpha Cellular (for the Ohio 2 RSA market), A-1 Cellular Communications (for the Missouri 11 and Texas 10 RSA markets)), Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM (for the Oklahoma 1 and Wyoming 4 RSA markets), Florida Cellular, Pinellas, and Signal ARE APPROVED.

23. IT IS FURTHER ORDERED That AALA's Request for Dismissal of Pleading (filed Feb. 5, 1999) (requesting that the Commission dismiss with prejudice: (1) the petition for reconsideration filed July 3, 1997 and (2) the consolidated reply to oppositions to petition for reconsideration filed by A-1 Cellular Communications, Cel-Tel, Cranford, EJM, and by Florida Cellular, filed July 28, 1997) IS GRANTED.

24. IT IS FURTHER ORDERED That A-1 Cellular Communications, Cel-Tel, Cranford, and EJM's Joint Request for Dismissal of Pleading (filed Feb. 5, 1999) (requesting that the Commission dismiss with prejudice the July 16, 1997 opposition to petition for reconsideration filed by AALA on July 3, 1997) IS GRANTED.

25. IT IS FURTHER ORDERED That Florida Cellular's Request for Dismissal of Pleading (filed Feb. 5, 1999) (requesting that the Commission dismiss with prejudice its July 16, 1997 opposition to petition for reconsideration filed by AALA) IS GRANTED.

⁵⁶ See Appendix A.

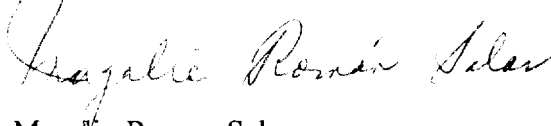
26. IT IS FURTHER ORDERED That, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Partial Reconsideration filed by Alee IS DENIED.

27. IT IS FURTHER ORDERED That, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by 2-Way Radio⁵⁷ IS DISMISSED.

28. IT IS FURTHER ORDERED That, pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Statement for the Record and Petition for Reconsideration filed by Castle Trust⁵⁸ ARE DISMISSED.

29. IT IS FURTHER ORDERED That, pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, the Motion for Extension of Time filed by 2-Way Radio on July 25, 1997 IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

⁵⁷ See Appendix C.

⁵⁸ See Appendix B.

APPENDIX A⁵⁹

A-1 Cellular: A-1 Cellular Communications, Alee, Cel-Tel, Cranford, EJM, and Jaybar
AALA: Applicants Against Lottery Abuse, Buckhead, CAC, CFL, Miller, Skywave, and ZDT
Alee: Alee Cellular Communications
Algreg: Algreg Cellular Engineering, A-1 Cellular, Bay Cellular, Bravo, Cel-Tel, Centaur, Cranford, EJM, Florida Cellular, Pinellas, and Signal
Alpha: Alpha Cellular
Bay Cellular: Bay Cellular of Florida
Bravo: Bravo Cellular
Buckhead: Buckhead Cellular Communications Partnership
CAC: Cellular Applicants' Coalition
Cel-Tel: Cel-Tel Communications
Centaur: Centaur Partnership
CFL: Thomas Domencich, the Committee for a Fair Lottery
Cranford: Cranford Cellular Communications
Crystal: Crystal Communications Systems
Data: Data Cellular Systems
EJM: EJM Cellular Partners
Jaybar: Jaybar Communications
Miller: Miller Communications, Inc.
North American: North American Cellular
Pacific: Cellular Pacific, Data, and North American
Pinellas: Pinellas Communications
Satellite: Satellite Cellular Systems
Signal: Signal Cellular Communications
Skywave: Skywave Partners, Inc.
ZDT: ZDT Partnership

⁵⁹ This Appendix A identifies the full names that correspond to the abbreviated names in this order, with the exception of the names that correspond to "Castle Trust", which are listed in Appendix B, and the names that correspond to "2-Way Radio," which are listed in Appendix C.

APPENDIX B

The following entities correspond to the name "Castle Trust" as used in this order:

Castle Trust
Orbit Cellular
RSA Cellular Partners
Schuylkill Mobile Fone, Inc.
B. Scott Reardon III
Skyline Cellular Partners
Sunrise Trust
Turnpike Cellular Partners
Walker Trust

APPENDIX C

This Appendix C identifies the entities that correspond to the name "2-Way Radio" as used in this order.

2-Way Radio	DiRico, Alfred
A+ Communications, Inc.	Diversified Cellular L.P.
Acad-Cell Partnership	DJK RSA Cellular, Inc.
Adrid, Antonio E.	Douglas, Cynthia Jean
Aggarwal, Darsh	Douglas, James Easterbrooke, III
American Cellular Operators	Douglas, James Easterbrooke, Jr.
American Rural Cellular, Inc.	Douglas, Kevin Glen
Bagley, Smith	Douglas, Hilah Lewis
Batten, Frank, Jr.	Eagle Fibercomm, Inc.
Bause Communications, Inc.	Fibrebond Corp.
Bay Cellular Ltd.	Folden, Gene
Blow, Robert B.	Foster, Kent S.
Brian O'Neill, Inc.	Gilcom Cellular, L.P.
Broadstreet Communication Partnership	Glenn, Robert B.
Broz, Robert Frank	Goodwin Barclay Robert, Jr.
Campbell, Jerry D.	Guin, Allen L. Jr. dba GI
CEH Cellular	Haskins, Robert, Inc.
Cellswitch	Hermes Cellular Phone
Cell-Switch	Hetafi, Inc.
Cellmates L.P.	High Tower Communications, Inc.
Cellular 428 Ltd.	Horizon Cellular Systems
Cellular Group One	ICC Cellular, Inc.
Cellwave, Inc.	Independence Day 1988 Cellular Partners
CenterCom Communications	Independent Cellular Systems
Chase Jr., Derwood S.	Intelligence Technology Corp.
Coastal Communications Assoc.	J & J Communications, Inc.
Colvin Cellular Group	Jefferson
Com/Nav Marine, Inc.	JMP Cellular
Constitution Cellular	Kitsap Cellular, Inc.
Continental Cellular L.P.	KO Communications
Danbury Cellular Telephone Company, Inc.	LeFleur Cellular Partnership
DC Rowley, Inc.	Maxcell Telecom Plus, Inc.
Derwood, Chase S. , Jr.	Mega-Tel Cellular III
Dial One	Melrose Communications Corp.
Dial Three	Mercury Cellular
Dial Two	Metacomm Cellular Partnership
Diamond Cellular	Midland Communications Corp.

Miller Communications, Inc.
Minerich, Inc.
Miscelco Communications, Inc.
Mobile Communications System
Mobile Teletalk Group
Mosely, Dean M.
Motorola, Inc.
Mountain View Cellular Partners
Mtel Cellular, Inc.
Namaqua Ltd. Partnership
National Billing Company, Inc.
National Cellular Organization
North-Maudlin Cellular Partnership
Northeastern Cellular Partners
Northern Communications
Olympus Teledata
O'Neill, Brian L.
Omni Cellular Communications
Pacific Mobile Group
Palmer Communications
Parker, James D.
Pegasus Cellular Telephone
Philip C. Holt Corp.
Prairie Partners
Providence Journal
R & D Cellular
Randolph Cellular, L.P.
Rawlings, Thomas E.
RD Rowley, Inc.
RSA Cellular Company
Rural Area Cellular Development Group
Sea-Roy
Sierra Cellular Partners
Silverdale Cellular, Inc.
Silver Wings General Partnership
Sonoma Cellular L.P.
Sound Cellular Service, Inc.
Star Cellular
Starfire
Sunde Cellular Communications Inc.
Sunde Cellular, Inc.
Sybarite Communications, Inc.

The Winners
Tibwin Communications Partnership
Townsend Brothers Partnership
TPF Partnership
Trinity
United Cellular Associates
Warner, Mark R.
Warren Cellular, Inc.
WCC Cellular
WestCell Services